



## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement") is made as of the 22nd day of January, 2009, between Clearwire Legacy LLC, a Delaware limited liability company ("Clearwire"), with a place of business located at 4400 Carillon Point, Kirkland, WA 98033, and Excalibur Communications, Inc. ("Contractor"), with its principal place of business located at 460 Green Tree Road, Suite 4-B, Sewell, New Jersey 08080.

Clearwire is expanding its market base. The scope of work (the "Scope of Work"), attached hereto as Exhibit A, to be performed by Contractor is the implementation of all or a portion of one or more wireless telecommunications sites.

Clearwire and Contractor agree as set forth below:

### **I. THE SCOPE OF WORK AND CONTRACT SCHEDULE**

Contractor shall execute the entire Scope of Work as described in and all work reasonably inferable by the Contractor which is necessary to produce the results intended by the description in Exhibit A and in the applicable site bid documents submitted to Contractor by Clearwire, except to the extent specifically indicated in Exhibit A, bid documents or in the Bid Form (Exhibit 3) to be the responsibility of others. Clearwire reserves the right under this Contract to award work to the Contractor at one or more construction sites.

The Scope of Work shall be Construction Substantially Complete no later than the date as stated in the Notice to Proceed ("NTP") issued by Clearwire for the applicable site. As used in this Agreement, "Construction Substantially Complete" or any of its derivations shall be defined as set forth in Exhibit A Section 5.2. This Agreement shall consist of this contract form signed by each of the parties, any exhibits referenced and incorporated into this Agreement, and any appendices or attachments referenced and attached to any exhibit and/or appendix, any change orders signed by the parties or any change directives issued by Clearwire.

Clearwire shall provide reasonable access to the site for Contractor. In the event that any laydown, parking, staging, mobilization or other work areas are not shown or described in Exhibit A, bid documents, or additional areas are needed by Contractor in addition to those shown or described in the Scope of Work, Contractor shall be responsible for obtaining any such areas at its own costs and expense.

### **II. TERM**

The term of this Agreement shall commence on the date of full execution date of the Agreement (the "Commencement Date") and shall expire on the later of (i) the date Contractor completes any assigned Work pursuant to this Agreement, or (ii) December 31, 2010.

### **III. CHANGE ORDERS AND CHANGE DIRECTIVES**

Additions, deletions, and modifications to the Scope of Work may be made by parties pursuant to change order signed by the parties ("Change Order") in the form of Exhibit B, attached hereto and made a part of this Agreement, or by change directive unilaterally issued by Clearwire at any time and from time to time. ("Change Directive"). The Contractor shall be entitled to, and there shall be, an equitable adjustment in the Contract Sum or Contract Time, whether through increase or reduction, in the event a Change Directive affects the Contract Sum or Contract Time. In the event the Contract Sum or Contract Time is increased, such adjustment shall be made only if such Change Directive in fact causes an increase in the Contract Sum or affects work on the critical path such that Contractor is delayed. The Contractor shall perform the work designated in the change directive whether or not the parties have agreed on the equitable adjustment to the Contract Sum or Contract Time. Any and all float in the

Contract Schedule shall be owned by Clearwire such that the float shall be first applied to any additional time resulting from Change Directives issued by Clearwire. In the event the parties cannot agree on the equitable adjustment to the Contract Sum or adjustment of the resulting from such Change Directive(s), the matter shall be resolved in accordance with the dispute resolution provisions contained in Article XIII, General Provisions, Paragraph I. Signature on a Change Order shall constitute a final settlement of all matters relating to the change in the work that is the subject of the Change Order, including but not limited to, all direct and indirect costs associated with such change, including but not limited to delay or acceleration damages and general home office overhead expenses, and any and all adjustment to the Contract Sum and the Contract Time other than as expressly stated in the Change Order. To be honored, any claim for adjustment must be made within 30 business days after receipt of the Change Directive or Change Order.

Contractor reserves the right to submit a separate proposal for work that Contractor believes is out of the scope of work of this Agreement, **which must be received by Clearwire prior to the commencement of any such work.** Contractor will not receive any additional compensation for work without prior written approval and Purchase Order (PO) obtained in advance of the work to be performed. It shall be Contractor's sole responsibility to demonstrate that work is out of scope. Clearwire may, at Clearwire's sole discretion, approve the additional out of scope work. Contractor shall provide to Clearwire thorough and complete documentation to demonstrate the extent of work out of scope, and include a specific breakdown of proposed additional out of scope work and a price list.

#### **IV. TIME, NOTICE TO PROCEED AND NOTICE TO PROCEED START DATE**

a. It is expressly agreed that **TIME IS OF THE ESSENCE** for all Work performed pursuant to this Agreement, and Contractor agrees that, by executing this Agreement, and commencing the Work under a Purchase Order, Contractor will comply with the Project Time set forth in the NTP. Contractor shall notify CLEARWIRE immediately of any difficulty in meeting the delivery schedule. Following notification, or in the event of actual failure to comply with the delivery schedule/project timeline, CLEARWIRE may, in addition to its other remedies at law and/or equity, require Contractor to return to Clearwire via air freight or other expedited method, at Contractor's expense, any material furnished to or by Contractor for which Clearwire has agreed to pay or has furnished. If the materials are returned more than 10 days in advance of their scheduled delivery date, CLEARWIRE may store them at Contractor's expense.

b. Construction Substantially Complete and Final Acceptance shall be defined as set forth in Exhibit A Section 5.2 .

c. If Contractor is delayed at any time in the progress of the Work by a labor dispute not involving the Contractor or activities at the Work Site, fire (unless due to the action or omission of the Contractor), unusual delay in delivery not the fault of Contractor, abnormal adverse weather conditions not reasonably anticipated, unavoidable casualties or other causes beyond Contractor's reasonable control (provided that Contractor's inability to pay money shall not be considered beyond its reasonable control) and not reasonably ascertainable pursuant to an investigation that was done (or reasonably could have been done), then the Project Time shall be extended by Change Order for such reasonable time as Contractor and Clearwire agree. The failure of Clearwire and Contractor to agree on such extensions shall not be cause for stopping the progress of the Work. Contractor's sole remedy for any delay pursuant to this Section IV(c) shall be an extension of time; Clearwire shall not be liable for any delay costs.

#### **V. CONTRACT SUM**

If Clearwire selects the Contractor to perform the Work, Clearwire will consider Contractor's bid for the applicable site the winning bid and the fee Clearwire pays Contractor for the Work shall be shown in a Purchase Order/Procedure Form (collectively, the "PO") issued by Clearwire for such services. The PO

amount will match the amount in Contractor's Bid Form for the applicable site. This PO will cover all costs Clearwire shall incur for the Work provided by Contractor pursuant to the specific assignment or bid of Work, unless as otherwise agreed to by the parties pursuant to this Agreement. Contractor may commence work upon request from Clearwire. **If the Services are commenced on a verbal authorization, the Contractor is advised that the Contractor shall be working at its own risk until the time a Purchase Order has been issued by Clearwire.**

Clearwire shall pay Contractor for Contractor's performance of this Agreement the sum as detailed on the Bid Form and PO for the applicable site, subject to additions and deductions as provided herein ("Contract Sum"). The Contract Sum includes all labor, material, equipment, supplies, tools, machinery, water, heat, utilities, transportation, permits, taxes, and other applicable fees and any other facilities or services required to complete the Scope of Work, in accordance with this Agreement.

**VI. PAYMENTS.** The fees listed in the Bid Forms are in U.S. dollars, unless stated otherwise.

a. Payment Upon Invoice: Contractor must submit an invoice identifying the Purchase Order number, Purchase Order line item number, and the Contract Sum for each Project no later than thirty (30) days after Contractor has received confirmation from Clearwire that Contractor has completed the major milestones as defined in section 5.2. All invoice amounts must match all Purchase Order line item numbers for description, quantity and cost. Clearwire will pay Contractor the Contract Sum within sixty (60) days upon receipt of a proper invoice that complies with the Clearwire invoicing policy, as modified from time to time at Clearwire's discretion and the applicable deliverables have been submitted to Clearwire. Contractor expressly agrees that in the event such invoices are not timely submitted, CLEARWIRE shall have the right, in its sole and absolute discretion, to reject such invoices for payment and Contractor shall have waived all rights to collect on such invoices.

b. Conditions of Payment. Notwithstanding, the Contract Sum is not due and payable until (i) the major milestones are met in accordance with Exhibit A section 5.2 and the project schedule ; (ii) Contractor has delivered to Clearwire a complete and partial release of all liens arising out of this Agreement, in the forms attached hereto as Exhibit B, or a bond satisfactory to Clearwire to indemnify Clearwire against such liens and receipts in full covering all labor, materials, and equipment for which a lien could be filed; and (iii) Contractor has supplied Clearwire with all items set forth in Exhibit A.

c. Withholding Payment. Contractor agrees that Clearwire may, in its sole and unfettered discretion, withhold payment as set forth in Section VI (f) below from any Contract Sum for any Project awarded Contractor hereunder, for the following reasons: (1) Contractor's failure to complete all punch list items designated by Clearwire, (2) defective Work not remedied by Contractor (including defects at a Work Site discovered by Clearwire subsequent to payment of the Contract Sum for such site), (3) claim(s) filed by a third party related to Contractor's Scope of Work, (4) failure of Contractor to make payments properly to subcontractors or for labor, materials or equipment, or the failure to obtain lien releases in recordable form, (5) damage to Clearwire or another contractor, (6) failure to carry out the Work in accordance with this Agreement, (7) any liens filed against any Project, (8) other breaches of this Agreement by Contractor, and (9) any claims by Indemnitees against the Contractor or its subcontractors.

d. Waiver/Release: Contractor acknowledges and agrees that Contractor's acceptance of a payment for a Project payment milestone (as defined in Exhibit A section 5.2) constitutes an unconditional release of all claims Contractor has against Clearwire related to that Project payment milestone. Upon acceptance of payment of all applicable Project payment milestones, Contractor acknowledges and agrees that Contractor's acceptance of such payments constitute an unconditional release of all claims Contractor has against Clearwire related to that Project. Further, Contractor acknowledges and agrees that Owner may choose any of the following remedies:

- i. Clearwire may reduce the Contract Sum by an amount of one percent (1%) multiplied by each day that Contractor fails to complete the Project to the Clearwire's complete

satisfaction beyond the Project Time, and Contractor releases all claims arising from or related to that reduction;

- ii. Clearwire may apply any withheld Contract Sum(s) to cure defective Work or complete any Project; AND
- iii. Contractor forfeits any full or partial Contract Sum that Contractor does not invoice Clearwire for within sixty (60) days from the conclusion of the Project.

Contractor waives all rights to and irrevocably assigns to Clearwire the full or partial Contract Sum that is reduced, applied or forfeited pursuant to the terms of this Section.

e. Upon completion of the payment milestones set forth in Exhibit A section 5.2, as it may have been amended by Change Orders or Change Directives, Contractor shall submit a detailed invoice reflecting work performed and material or equipment installed in accordance with the Agreement provided the required deliverables as outlined in Exhibit A, have been submitted and accepted by Clearwire. As a condition precedent to receiving payment, Contractor shall also submit a conditional release of liens arising out of the performance of the Scope of Work from Contractor, all subcontractors, if any, working on the site with Contractor and any material suppliers having a supply contract with Contractor in the amount of \$10,000 or more. Such release shall be in the form of Exhibit C, attached and made a part of this Agreement, or in the form required by the legislation of the State in which the work was performed (if applicable). and shall be conditioned only upon, and shall be effective only to the extent of, payment by Clearwire of the portion of the Contract Sum to Contractor as stated in the conditional release. Such conditional release shall be a self-executing full, final and complete release of all lien rights upon payment by Clearwire of the Contract Sum in good funds to Contractor. Upon request of Clearwire, after payment of the Contract Sum, Contractor shall provide Clearwire with a written unconditional waiver and release of all liens in the form of Exhibit "D" , or in the form required by the legislation of the State in which the work was performed (if applicable)..

f. Upon Construction Substantially Complete (as defined in Exhibit A Section 5.2) of the Scope of Work, Contractor's and Clearwire's representatives shall meet, review and inspect the Work to determine whether the Work is in accordance with this Agreement. In the event that there are any portions of the work not conforming to the requirements of the Agreement ("deficiency" or "deficiencies"), Clearwire shall note such deficiencies in a written list ("Punchlist") and provide such Punchlist to the Contractor or Contractor's representative, along with the estimated cost to complete or repair each item on the Punchlist. Clearwire shall have the right to withhold from the payment due Contractor the greater of thirty percent (30%) of the Contract Sum or an amount equal to the cost of completing or repairing such items, times one hundred fifty percent (150%). Not later than twenty (20) days after the date of the Punchlist, the Contractor shall complete or repair all Punchlist items in a workmanlike manner, in accordance with this Agreement. In the event the Contractor fails to complete or cure any deficient items identified on the Punchlist in accordance with this Agreement, Clearwire shall have the right to exercise any and all remedies with respect to such deficiency for deficiencies, including without limitation the right to contract with others for completion and/or repair of such items, and to withhold a reasonable amount from the Contract Sum for the repair or completion of such deficiency or deficiencies. Any and all other balances owing under the Contract Sum shall be paid to Contractor at that time. Upon Final Acceptance (as defined in Exhibit A Section 5.2), Contractor may invoice for the amount withheld from the Contract Sum. As a condition precedent to payment upon Final Acceptance, the Contractor shall submit any and all documents outlined in the Network Deployment Acceptance Checklist & Punchlist, including supplier, manufacturer or equipment warranties and operation manuals with respect to any equipment or materials installed by Contractor.

## **VII. INSURANCE**

During the term of this Agreement, Contractor shall procure and maintain at Contractor's sole expense, all insurance and/or bonds required by law and this Agreement, including insurance in not less than the following amounts for the following coverages:

- A. **Worker's Compensation Insurance:** In accordance with the laws of the state where the Scope

of Work shall be performed.

- B. **Commercial General Liability Insurance:** Commercial general liability (CGL) coverage shall be obtained and maintained which shall include contractual liability insurance and completed operations, with a coverage limit of not less than \$1,000,000 combined single limit per occurrence for bodily injury or property damage liability.
- C. **Auto Liability Insurance:** If the use of any automobile is required by Contractor or any of Contractor's employees in the performance of the Scope of Work, Contractor shall obtain and maintain auto liability insurance for the operation of all owned, non-owned, and hired automobiles with a coverage limit of not less than \$1,000,000 combined single limit per accident for bodily injury or property damage liability.
- D. **Umbrella Liability Insurance:** Contractor shall obtain and maintain an umbrella general liability insurance policy of not less than \$5,000,000 combined single limit, applying in excess of Comprehensive General Liability in subparagraph (b) and Auto Liability, if applicable, in subparagraph (c).

Prior to the NTP Start Date or within ten (10) business days after the date of this Agreement, whichever is earlier, Clearwire and its affiliates shall be named as additional insureds on all policies obtained by Contractor pursuant to this Agreement. Contractor shall provide Clearwire with Certificate(s) of Insurance, satisfactory in form and content to Clearwire, evidencing that such insurance has been obtained and providing that such insurance shall not be canceled or materially altered without first providing Clearwire with thirty (30) days prior written notice.

All insurance required under this Agreement shall be from a company or companies having a *Best's Insurance Guide* rating of no lower than "A" and a financial rating no lower than "XII" and be lawfully authorized to do business in the jurisdiction in which the project is located, shall name Clearwire as an additional insured; and shall be primary and non-contributory. The Best's rating shall be that included in its then-current rating book. All such insurance shall be written on an occurrence basis and shall be maintained, without interruption, from the date of commencement of the Work until the date of final payment. If the Contractor fails to purchase and maintain any insurance required by this Agreement, Clearwire may, but shall not be obligated to, upon not less than five (5) business days' written notice to the Contractor, purchase such insurance as Clearwire deems necessary to protect its own interests, and shall be entitled to be reimbursed by the Contractor upon demand by Clearwire for such premium costs.

In the event that there are any subcontractors on the job, the Contractor shall cause each subcontractor to (i) procure insurance reasonably satisfactory to Clearwire, and (ii) name Clearwire as an additional insured under the subcontractor's commercial general liability policy. The additional insured endorsement included in the subcontractor's commercial general liability policy shall state the coverages afforded the additional insureds with respect to claims arising out of the operations performed by or on behalf of the Contractor. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis rather than primary. The amount of the insurer's liability under such insurance policy shall not be reduced by the existence of such other insurance of Clearwire.

## VIII. **WARRANTY**

Contractor hereby represents and warrants that all work performed hereunder shall be performed by qualified personnel promptly and with diligence, in accordance with the Work Order. Contractor warrants that all work will be completed in a good and workmanlike manner, in accordance with a level of care, skill, knowledge, and judgment required or reasonably expected of firms or persons performing comparable services, and in strict accordance with this Agreement. All materials and equipment provided hereunder shall be new and of the highest grade unless otherwise specified. If required by Clearwire, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Contractor represents and warrants that all work, materials, and equipment furnished under this Agreement shall conform to the requirements contained in the Scope of Work and shall be free from faults and defects in workmanship or materials for a period of two (2) years from the date of completion. All work not conforming to the standards shall be considered defective. All warranties provided in this Agreement shall survive the termination of this Agreement for any reason. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Clearwire shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.

#### **IX. TERMINATION/EVENT OF DEFAULT**

The following shall be deemed an Event of Default:

- 1) Contractor fails to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper materials for the Work;
- 2) Contractor fails to make prompt payment to subcontractors or for materials or labor or otherwise breaches its obligations with any subcontractor;
- 3) Contractor abandons the Work;
- 4) A mechanic's or materialman's lien or notice of such lien is filed against any part of the Work or Work site and not promptly removed, bonded or insured over by Contractor in a manner satisfactory to Clearwire, but in no event to exceed ten (10) days from the filing of such lien;
- 5) Contractor submits an application for payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified;
- 6) Contractor admits, in writing, its inability to pay its debts generally as they become due;
- 7) Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or similar or applicable Federal or State law;
- 8) A petition under any Federal or State bankruptcy or insolvency law is filed against Contractor and such petition is not dismissed within sixty (60) from the date of said filing;
- 9) A receiver, liquidator, trustee or assignee is appointed for Contractor;
- 10) Contractor violates any laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction over the Work or Work site; or
- 11) Contractor otherwise violates any provision of this Agreement and such violation is not cured to Clearwire's satisfaction within ten (10) days after written notice from Clearwire.

Upon an Event of Default, Clearwire, without prejudice to any remedy available to Clearwire under this Agreement or at law or in equity, may, upon written notice, terminate the engagement of Contractor. In case of such termination, Contractor shall not be entitled to receive any further payment for Work performed by Contractor through the date of termination.

In addition, upon an Event of Default, Clearwire may, without terminating this Agreement, make good any deficiencies in Contractor's work and may deduct the cost from the payment then or thereafter due Contractor. Alternatively, at Clearwire's sole option, if Clearwire elects to terminate this Agreement, Clearwire may take possession of the Work site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor and may finish the Work by whatever method Clearwire may deem expedient. If requested by Clearwire, Contractor shall remove any part or all of its

equipment, machinery and supplies from the Work site within seven (7) days from the date of such request, and in the event of Contractor's failure to do so, Clearwire may have the equipment, machinery and supplies removed at Contractor's expense. If the unpaid balance of the Work sum is less than the cost of finishing the Work or other damages incurred by Clearwire, Contractor shall pay the difference to Clearwire within ten (10) business days of receipt of an invoice from Clearwire.

Clearwire's rights and remedies in this Section VIII shall be in addition to any other rights under this Agreement, or at law and/or equity.

In any event, Clearwire may terminate this Agreement upon one (1) business day notice to Contractor, without cause, for Clearwire's convenience. In such an event, Clearwire will pay for the Work completed through the date of termination specified in the termination notice. Upon such termination for convenience, Contractor shall promptly transfer all supplies, equipment, materials and the Work site in good order and cooperate with Clearwire in any transition of Work.

#### **X. PROPRIETARY INFORMATION**

Any specifications, records, drawings, dates, computer programs, program documentation, or any other technical, business, or financial information furnished or made available by Clearwire to Contractor shall remain Clearwire's property, shall be kept confidential and shall be used by Contractor only for the purposes of this Agreement and, if in written, graphic, or other tangible form, shall be returned promptly to Clearwire at its request. With respect to Confidential Information disclosed orally, writing by the disclosing party summarizing the Confidential Information disclosed shall be sent to the receiving party within 30 business days after such oral disclosure. This provision shall be in addition to and shall not supersede any non-disclosure agreement entered into between the parties.

#### **XI. INDEMNIFICATION AND LIMITATION OF LIABILITY**

Contractor shall indemnify, defend, and hold harmless Clearwire, its affiliates, and the directors, officers, shareholders, agents, and employees of any of them (collectively, "Indemnitees"), from and against any claim, loss, suit, cause of action, expense (including attorneys' fees), fine, penalty, damage, injury, or any liability whatsoever, including liability for patent infringement for material or equipment proposed to be used by Contractor (individually and collectively, "Liabilities") for injury to or death of any person or damage to or loss of any property, or property rights, whether tangible or intangible, due to the services to be performed or materials to be supplied hereunder or due to the willful or negligent acts or omissions of Contractor or its subcontractors. Clearwire shall indemnify, defend, and hold harmless Contractor and its Indemnities from and against any Liabilities for injury to or death of any person or damage to or loss of any property, due to the willful or negligent acts or omissions of Clearwire or its agents and arising out of or related to this Agreement. The provisions of this Article X shall survive the expiration or termination of this Agreement.

NEITHER CLEARWIRE NOR CONTRACTOR SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR COMMERCIAL LOSS OF ANY KIND, INCLUDING LOSS OF BUSINESS OR PROFITS, WHETHER BASED UPON BREACH OF WARRANTY, BREACH OF AGREEMENT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT CLEARWIRE OR CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **XII. COMMUNICATIONS AND NOTICES**

All communications to Clearwire shall be through Clearwire's designated representative as identified in the NTP or in the preconstruction meeting. Contractor shall, not later than 3 business days after the NTP or the preconstruction meeting whichever first occurs, designate a representative or representatives authorized to give and receive communications from Clearwire and, if different, such

individual who is or individuals who are authorized to bind the contractor. All notices shall be in writing and sent by hand delivery, by certified mail, return receipt requested, or by nationally recognized overnight courier to the addresses set forth below. Notice shall be effective upon actual receipt by the parties or the third day following the date of deposit in the US Mail. Either party may designate a different address to which notices are to be delivered by providing to the other party a written notice indicating such change of address.

**CLEARWIRE:** Clearwire Legacy LLC  
4400 Carillon Point  
Kirkland, WA 98033  
Telephone: 425-216-7600  
Attn: Contracts Department

cc: Clearwire Legacy LLC  
4400 Carillon Point  
Kirkland, WA 98033  
Attn: Legal Department

**CONTRACTOR:** Excalibur Communications, Inc.  
460 Green Tree Road, Suite 4-B  
Sewell, New Jersey 08080  
Attn: Harry Smith / Jason Smith

### **XIII. GENERAL PROVISIONS:**

- A. Neither Clearwire nor Contractor is responsible for interruptions or delays caused by strikes of material or equipment supplier labor forces that affect delivery schedules, lockouts, governmental acts, acts of God or other conditions beyond their control. Any such interruption or delay shall not be considered as a breach of this Agreement, but shall entitle the Contractor to an extension of the Contract Time.
- B. Contractor shall comply with all applicable federal, state, county, and local laws, ordinances, regulations, orders, and codes (including procurement of required licenses, permits, or certificates and furnishing required notices) in its performance hereunder, irrespective of whether a specification is furnished.
- C. Contractor warrants that Contractor is familiar with the general physical geology and topography of the project site. Contractor warrants that Contractor has inspected the specific site and is chargeable with any knowledge regarding the site that such inspection would reveal. In the event Contractor believes that any physical condition at or contiguous to the site that is uncovered through excavation differs materially from that shown or indicated in the Agreement, or is of an unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in the work of the character provided in the area of the project site, Contractor shall, not later than five (5) business days after becoming aware thereof, and before further disturbing conditions affected thereby, or performing any work in connection therewith, notify Clearwire in writing about such condition. Clearwire or their authorized representative may make an examination of the site within five (5) business days of receiving written notification by Contractor. Dependant upon the outcome of Clearwire's inspection, An equitable adjustment in the Contract Price or in the Contract Schedule, or both, may be allowed to the extent that the existence of such differing site condition causes an increase or decrease in the Contractor's cost of or time required for performance of the Scope of Work, provided that Contractor shall not be entitled to an increase in the Contract Sum if the existence of such differing site condition should have reasonably been known by the Contractor or could have been discovered upon visual inspection of the property or performance of any testing required by this Agreement.




- D. Contractor is an independent contractor who shall be responsible for any actions of its subcontractors and suppliers when such subcontractors and suppliers are on and at the work site when such work site is under the control of the Contractor. When Contractor has control of the work site or work areas in accordance with this agreement, Contractor shall also have responsibility for safety of, and provide reasonable protection to prevent damage, injury or loss to employees or other third persons at the work site, the work in progress and any materials or equipment stored on the work site whether by Contractor or any subcontractor, and any other property at the work site or adjacent thereto, such as trees, suburbs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- E. In the event that site drawings are required, Contractor shall submit site drawings to Clearwire for review by Clearwire's architect. Any data shown on these site drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show Clearwire's architect the materials and equipment Contractor proposes to provide and to enable Clearwire's architect to review the information. Any submittals for samples shall be submitted to Clearwire in a timely manner to allow review by Clearwire or Clearwire's representatives. Before submitting any site drawing or sample, Contractor shall have determined and verified that (i) all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto; (ii) all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the work; and (iii) all information relative to Contractor's sole responsibilities with respect to means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto. Contractor shall have also reviewed and coordinated each site drawing and sample with other site drawings or samples and with the requirements of the work and contract documents. Each submittal will bear a stamp or specific written indication that Contractor has satisfied Contractor's obligations under the contract documents with respect to Contractor's review and approval of such submittal. Upon completion of the Scope of Work, Contractor shall submit as-built drawings to Clearwire verifying actual as-built conditions. In the event that Contractor determines it is necessary to deviate from a brand name specified item, or if an item is specified as an "or equal," Contractor shall submit to Clearwire in a timely manner the specification or description of any substituted product or item. If an item of material or equipment proposed by Contractor is functionally equal to that specified, and sufficiently similar so that no change in the related Scope of Work will be required, in Clearwire's sole discretion, Clearwire may accept such item. Until such acceptance of substituted items, no deviation shall be made from the Scope of Work by the Contractor. Any work performed on Construction in advance of receipt of Clearwire's approval on the site drawings shall be at the Contractor's own risk. Clearwire's approval of the site drawings, however, shall in no way relieve the Contractor from its obligation to insure their accuracy and conformity to Clearwire's site specific statement of work, installation guidelines and this Agreement. Any site drawing submitted to Clearwire which, if accepted, will require a change to the Purchase Order, shall be submitted with written description of the change required.
- F. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions.
- G. Contractor shall keep the work site, any of Clearwire's property on which the work site is located and surrounding area free from accumulation of waste materials or rubbish caused by

operations under this Agreement. Flammable material shall be stored securely and away from fire, and oily rags, waste, and refuse shall be removed from the site each night. Contractor shall provide and maintain all temporary walkways, roadways, trench covers, barricades, colored lights, danger signals, and other devices necessary to provide safety and traffic around the site. At completion of the Work, Contractor shall remove from and about the project site waste materials, rubbish, Contractor's tools, construction equipment, machinery and surplus materials.

- H. Time is of the essence in this Agreement. The waiver of any term, provision, or any default shall not constitute the waiver of any other term, provision or default. This Agreement shall be governed by the laws of the State in which the work is to be performed. If any part of this Agreement shall be adjudged contrary to law, the remaining provisions hereof shall remain in full force and effect. The prevailing party in any action or proceeding in court arising out of or relating to this Agreement shall be entitled to receive its reasonable attorneys' fees and other reasonable costs and expenses incurred in connection with such action or proceeding from the non-prevailing party.
- I. In the event that there is any matter for which Contractor claims an adjustment to the Contract Sum or an extension of time, or an interpretation of this Agreement, Contractor shall notify Clearwire of such claim in writing. Such written notification shall be made not later than fifteen (15) business days after the date on which the Contractor has knowledge of such claim. The representatives of the parties shall meet and attempt to resolve the matter as promptly as possible. In the event that the parties' representatives cannot resolve the matter, either party may request mediation by serving the other party a written notice of such request. The parties will enter into good faith negotiations on a mediation agreement. In the event that the parties cannot arrive at an agreement with respect to the mediator or the mediation process within thirty (30) business days after the date of the written notice of the request for mediation, either party may proceed with any rights or remedies that party has at law or in equity.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, one of which is to be delivered to Contractor and the remainder to Clearwire, each of which shall represent one and the same agreement.

#### **CLEARWIRE LEGACY LLC**

By   
(Signature)

John A. Storch  
(Printed Name Only)

V.P. Network Deployment  
(Title)

#### **EXCALIBUR COMMUNICATIONS, INC.**

By   
(Signature)

Harry D. Smith, Jr.  
(Printed Name Only)

President  
(Title)

**EXHIBIT A**

# Clearwire Civil Construction Scope of Work

## Clearwire Network Deployment

Rev. 9-5-07

### Overview

This document includes the Civil Construction Scope of Work (SOW) for New Site Deployment projects.

This document contains trade secrets and proprietary information of Clearwire. No disclosure or use of the information contained herein is permitted without the prior written consent of Clearwire.

### 1.0 Overview

Clearwire will engage Contractor to perform civil construction services for the deployment of wireless technology. The Contractor will follow the Network Deployment process described in attached Exhibit 2 to ensure common methodology is utilized across the network with a focus on the three following objectives: schedule, cost, and quality. Exhibit 2 is intended to present an overview of the deployment process and is not a comprehensive summary of all activities required to complete the Work required under this SOW.

Due to the variety of equipment application configurations at various types of sites, this Statement of Work (SOW) has been developed utilizing Clearwire Fixed Models (CFM) to accommodate the various site types and a Modular Add-On (MAO) list of configurations to accommodate the various additional items that may be required based on non-standard installations.

### 2.0 Scope of Work

#### 2.1 Definitions / Terminology / Glossary

Term:	Definition:
BSS	Basic Site Survey
CA	Construction Agreement
CFM	Clearwire Fixed Model
EMSS	Engineering Materials Site Specifications
FAA	Federal Aviation Authority
FCC	Federal Communications Commission
KPI	Key Performance Indicator
LEC	Local Exchange Carrier
LOS	Line of Sight
MAO	Modular Add-On
MGB	Master Ground Bar
MPOE	Minimum Point of Entry
MS	Milestone
MW	Microwave
NIC	Network Installation Center
NTP	Notice to Proceed
OFS	Oracle Financial System

<b>Term:</b>	<b>Definition:</b>
POP	Point of Presence / Point of Population
SA Vendor	Site Acquisition Vendor
SCIP	Site Candidate Information Package
SOW	Statement of Work

### 2.1.1 Contacts

<b>Name</b>	<b>Role</b>	<b>Phone</b>	<b>Email</b>
Ana Hemmert	Contracts Manager	(425) 216-7864	ana.hemmert@clearwire.com
Gregory Dumond	Purchasing	(425) 216-7920	gregory.dumond@clearwire.com

### 2.2 Project Scope

The project scope provides for site construction services from issuance of a NTP through Final Acceptance (Milestone 160) including all intermediate activities and milestones; provided, however, Clearwire may, in its sole discretion, authorize performance of all or only a portion of the full scope of Services, without any further obligation or commitment.

Civil construction includes all tasks required to bring the site on-air for commercial service. Civil construction tasks include but are not limited to site preparation, equipment, antenna, and cable installation and testing, AC power/T1 termination and testing, Microwave installation and testing, path alignment, site commissioning, turnover documentation, and site acceptance.

The project will follow Clearwire's documented project plans and processes.

Any changes to the pricing must be approved by Clearwire in the form of a written change order pursuant to the terms of the change order provisions as set forth in the Construction Agreement.

### 2.3 Training & Certification Requirements

Contractor shall supply resources skilled to perform all of its subcontracted duties in full conformance with all professional standards applicable to Contractor and shall be of a high grade, nature and quality, commensurate with that which is customary in the industry and consistent with the Clearwire policies and procedures including the Installation Guide, as modified from time to time.

Clearwire will not compensate Contractor or Subcontractor(s) for the training of technical staff used on Clearwire projects. Staff is expected to have adequate training and any applicable credentials and licenses to meet the qualification requirements outlined in this document. Contractor training on Clearwire proprietary systems, applications, processes and methodologies will be the responsibility of Clearwire.

General Contractors performing work for Clearwire are required to become "Clearwire Qualified" on Installation Practices and General Processes prior to conducting any job walks and/or performing any work. Qualification entails completing a designated training course either directly offered by Clearwire or a Clearwire designated third party. Clearwire retains the right to determine what percentage of the General Contractor's employees must be qualified. Please consult with your Clearwire Project Manager to determine the requirements for Clearwire qualification.

### 2.4 Deliverables

Clearwire will provide Contractor project specifications, for each market. An important objective of the project methodology is to develop, construct, and operate sites at the lowest possible cost, while maintaining schedule, quality, and reliability.

Contractor is required to supply their own computers and any other items necessary for project tracking and reporting, and for testing, commissioning, and interfacing with other necessary systems as required. Contractor is expected to maintain the most current versions of virus protection to ensure safe interface and file sharing.

#### 2.4.1 Site Construction

The Contractor will provide services for construction through on-air completion. The Contractor will provide a complete team commensurate with the required services. The work shall be completed in accordance with the applicable installation guide, equipment specifications, and compliance to all safety procedures and requirements.

Construction will be based on the market site plans agreed to and reviewed by Clearwire adhering to the SOW and specifications. Any standards variation must receive Clearwire's prior written approval.

The major construction roles and deliverables are set forth in **Section 2.5.3: The Division of Responsibility** matrix.

It is understood and agreed that in the event that Contractor has completed and achieved Site On-Air (Milestone 150) and the Site is placed in commercial service, but completion of Site Acceptance (Milestone 160) is delayed for a period in excess of 60 business days due to: (a) weather conditions that prevent finishing landscaping, painting and/or roof repair, or (b) the Site is operating under temporary power and permanent power has not yet been brought to the Site, then, for determining when payments are due for Payment Milestone #2, the Site will be deemed accepted; Contractor has delivered the pertinent deliverables and has provided Clearwire with a proposed plan and time table for the completion of the incomplete items. Contractor understands that acceptance of the Site under these circumstances is for payment purposes only and no other purpose. Contractor is required to remain in constant communications with Clearwire until such time as the Site Acceptance (Milestone 160) is achieved. Contractor is required to commence and diligently pursue completion of all work at the Site as soon as reasonably possible. Contract will develop a new standard milestone schedule, report actual number of days of impact by weather or other, and report actual percentage of job held.

#### 2.4.2 Testing and Acceptance

SA Vendor and/or Clearwire representative, will be responsible for the coordination and verification of Contractor work and to ensure these activities are completed in an efficient and expedient manner. Testing of equipment will be performed to manufacturer testing standards, the Clearwire installation guide and other documentation provided by Clearwire. Contractor will coordinate with the SA Vendor or other third party, as designated by Clearwire, for acceptance of the final product. The Clearwire project manager or their designated representative will be responsible for verifying the equipment performs as specified.

The Contractor will schedule a walk-thru with the SA Vendor and/or Clearwire representative, per site, when the site is "commissioning ready" for acceptance and when all tests have been conducted and documentation completed per the requirements.

The following is a description of the activities involved in the testing and acceptance process:

Contractor completes equipment installation, integration and provides commercial AC power or generator power if commercial AC is not available at time of commissioning.

- The microwave link shall be installed, aligned, and tested by Contractor before commissioning. The microwave shall be tested and perform within Clearwire and manufacturer specifications.
- Clearwire Commissioning resources connect batteries, power-up and test of all electronics, RF components, transport, or adjunct systems per the appropriate Clearwire Test Plans available at the time.
- If the SA Vendor and/or the Clearwire representative identifies any items that are non-conforming to Clearwire Specifications, Contractor will be notified and Contractor will promptly initiate and complete repair of such non-conforming items, provided that Contractor shall initiate the repairs no later than 1 business day from receipt of the notice from Clearwire. Upon completion of all identified non-conformances, Contractor shall inform Clearwire that work is complete.
- RF performance testing is performed by Clearwire. Testing to validate user perceived performance will be measured via drive test.

Acceptance of a Site involves the successful handoff from the construction phase into the commissioning phase. The Contractor will be required to perform a single site walk with the SA Vendor and/or Clearwire representative to ensure all requirements have been complied with and all punch list items have been completed; provided that additional site walks will be required in the event that non-conforming items have been identified. In addition, all quality control and other required documentation must be transmitted and accepted by Clearwire to complete the

site acceptance as required by Clearwire Specifications, including but not limited to the Clearwire Acceptance Checklist & Punchlist attached hereto as Exhibit 7 and Clearwire Installation Guide (Exhibit 6). The Contractor will have a reasonable period to complete any remedial work required.

#### **2.4.2.1 Project Close Out**

Contractor shall facilitate a closeout meeting for the project to determine the remaining objectives of both parties to meet the contractual obligations. The project managers will identify all existing obligations by either party required to complete the agreement, assign action items, and close dates. Contractor shall prepare a commissioning, turnover, and acceptance plan to be reviewed and approved by Clearwire to include, but not be limited to, documentation, claim resolution, and property transfers.

### **2.5 Roles and Responsibilities**

The Contractor's primary responsibilities are set forth in **Section 2.5.3: The Division of Responsibility** matrix (DOR). This DOR matrix defines the allocation of responsibilities between Clearwire and the Contractor.

#### **2.5.1 Contractor's Primary Responsibilities**

##### **2.5.1.1 Project Management**

Contractor will coordinate and integrate their activities with Clearwire's Engineering representative, SA Vendors, and equipment suppliers involved with the deployment of the network. The Contractor will provide planning and scheduling services for the overall construction and commissioning program. Additionally, the Contractor will monitor compliance of contractor's sub-contractors and suppliers in accordance with Clearwire's safety program and quality criteria. It will be the responsibility of the Contractor to report to Clearwire instances of noncompliance by any of the sub-contractors or suppliers.

The major project management roles and deliverables are set forth in **Section 2.5.3: The Division of Responsibility** matrix.

As part of the services provided to Clearwire under the Construction Agreement the Contractor will provide civil construction related project management services for Clearwire:

1. Determine and define project requirements and objectives and communicate this information to Clearwire on the progress / status of the overall build plan. This includes identifying the responsible party for each task.
2. Develop a consistent set of work processes and interface points, which will provide the basis for scheduling and linking the phases and participants. This will be done so that each reporting element will provide the necessary data required to monitor overall progress and cost status to management in order to monitor and track the overall program.
3. Develop and maintain a Milestone Plan of Record that identifies the key activities required to construct sites including agreed construction completion dates per site. Track the key activities based on ongoing input and feedback from applicable groups. The key activities include, but are not limited to: Clearwire activities, supplier activities, regulatory and permitting activities, and construction.
4. Establish regular steering meetings or other related meetings to communicate project status provide status reporting on all projects.
5. Establish and maintain an Action Items Lists and Critical Items Lists including priority, action description, owner, due date, and other key information as deemed necessary. Communicate open items and issues before they become critical.
7. Track and report costs and commitments against original submitted proposals at a site level. Provide regular reports to explain any variances.
8. Contractor may be required to use Clearwire specified tools / databases as determined by Clearwire.

### **2.5.2 Clearwire's and SA Vendor's Primary Responsibilities**

Clearwire's and SA Vendor's primary responsibilities are set forth in **Section 2.5.3: The Division of Responsibility** matrix (DOR). This DOR matrix defines the allocation of responsibilities between Clearwire, the SA Vendor and the Contractor.

Additional Clearwire and SA Vendor responsibilities, not outlined in the division of responsibilities, include but are not limited to the following:

- Establish program level schedule for each market
- Participate in the development of site standards
- Provide material equipment standards
- Provide regulatory interface and oversight of regulatory processes
- Procure Nextnet equipment based on monthly equipment forecasting
- Provide Network Architecture and Network Engineering disciplines
- Ensure all necessary POPs are installed, tested, and commissioned prior to the start of Site Commissioning.
- Provide pertinent information on strategic Clearwire agreements and relationships with power/utility companies, other carries, preferred suppliers and tower companies.

**2.5.3 Division of Responsibilities**

R – Responsible

I – Inform

C – Consulted

<b>Role Descriptions</b>	<b>MS</b>	<b>Clearwire</b>	<b>SA Vendor</b>	<b>Contract or</b>
<b>Planning / General</b>				
• Develop Regional Network Plan		C	R	
• Develop list of prioritized sites		C	R	
• Establish Key Planning Assumptions		C	R	
• Establish Operational Baseline and site specific information		C	R	
• Issue NTP and specifications to Contractor(s)		C	R	I
• Request market level Purchase Orders		C	R	I
• Review Specifications and NTP and develop and verification questions		I/C	R	R
• Provide answers to verification questions		C	R	I
• Develop a project critical path schedule and then track milestones.		I/C	R	I
• Site Type classification (for applicable MAO)		I/C	R	R
<b>RF Design, Backhaul Plan, Planning</b>				
• Update Clearwire systems database		I	R	I
• Create RF Network Design		R	I	
• Create and update Network Design		R	I	I
• LATLONG, Site ID, All RF parameters as designed				
• Channel assignments and Prequal information				
• Complete upload templates to populate database				
• Upload financial systems		R	I/C	I
• Establish project numbers				
• Upload Oracle Financial Systems (OFS)				
• Complete Backhaul Plan		R	I/C	I
◦ Microwave design for candidate site.				
◦ Complete upload templates to populate database				
◦ Line-of-Site Survey				
• Microwave or Leased T1 Decision		R	I	
• Submit and receive all applicable regulatory filings.		R	I/C	
• Entry & Testing Agreement/Access Coordination		I	R	I
<b>Site Acquisition – Candidate Identification</b>				
• Search rings issued to SA Vendor	005	R	I	
• Site research and candidate identification		I/C	R	
• Review and rank candidates based on RF criteria and constructability		R	C	
• RF propagation analysis and primary candidate selection		R	C/I	
• Provide necessary site Backup information:	010	I	R	
• Site address and site legal information (correct address)				
• LAT / LONG				
• Landlord information				
• Zoning and permitting analysis				
• Site type & Structure type				
• Proposed ground equipment location				
• Proposed antenna elevation				
• Commercial power and telephone utility availability				



Role Descriptions	MS	Clearwire	SA Vendor	Contract or
<ul style="list-style-type: none"> <li>Local Exchange Carrier (LEC)</li> <li>Commercial power company</li> <li>Verify microwave path Line of Site (LOS) with Engineer</li> <li>Digital photographs at antenna elevation if possible facing True North and all (3)-three antenna azimuth orientations.</li> <li>Digital photograph of commercial power and telephone minimum point of entry (MPOE).</li> <li>Digital photograph of lease space.</li> <li>Digital photographs of any potential RF propagation hazards; trees, buildings, cranes, etc.</li> <li>List of any potential risks or hazards</li> <li>List construction concerns, initial cost estimate.</li> </ul>				
<b>Site Acquisition – Lease Agreement</b>				
<ul style="list-style-type: none"> <li>ClearVision is updated with primary candidates and released to SA Vendor</li> </ul>	020	R	I	
<ul style="list-style-type: none"> <li>ClearVision updated with backhaul plan</li> </ul>	030	R	I	
<ul style="list-style-type: none"> <li>Negotiate lease agreement and coordinate all meetings and correspondence with landlord, attorney, board, association or agent</li> </ul>		I	R	
<ul style="list-style-type: none"> <li>Coordinate Design Visit with A&amp;E\Construction\RF Engineering necessary for permit requirements and to verify microwave path line of site (LOS)</li> </ul>		I	R	
<ul style="list-style-type: none"> <li>Lease Agreement Fully Executed               <ul style="list-style-type: none"> <li>Completion of all necessary leasing documents as per Clearwire's Standard Lease Agreement</li> <li>Negotiate all terms and agreements as per Clearwire's guidelines</li> <li>Review all non-standard business terms with Project Manager and non-standard legal terms with Clearwire legal.</li> <li>Ensure all antenna requirements have been clearly identified including BTS, GPS, and M/W</li> <li>Ensure all necessary title searches have been obtained</li> <li>Obtain all necessary signatures and initials from all parties.</li> <li>Obtain completed and signed W9 forms</li> <li>Ensure all lease exhibits, zoning drawings, photo renderings, and construction drawings have been reviewed and signed by the landlord (if required)</li> <li>All contracts executed and lease package submitted to Clearwire.</li> </ul> </li> </ul>	050	I	R	
<b>Site Acquisition – A&amp;E Management and Zoning</b>				
<ul style="list-style-type: none"> <li>Identify and coordinate engagement of Architectural and Engineering (A&amp;E) Firm per Clearwire guidelines</li> </ul>		I	R	C
<ul style="list-style-type: none"> <li>Manage A&amp;E firm (Civil\Structural)</li> <li>Provide all necessary site drawings and documentation to A&amp;E firm</li> <li>Ensure A&amp;E has State Registered Engineer's stamp for all applicable drawings, letters of assurance, documents, and permit submittals</li> <li>Provide 2C survey coordinates (only if applicable)</li> <li>Provide existing tower structure data</li> <li>Conduct structural analysis (only if required)</li> <li>Order site survey (only if required)</li> <li>Prepare and submit NEPA filing (only if required)</li> <li>Prepare and submit SHPO filing (only if required)</li> </ul>		I	R	C

Role Descriptions	MS	Clearwire	SA Vendor	Contract or
<ul style="list-style-type: none"> <li>Coordinate Phase-0 and Phase-I environmental studies (only if required)</li> <li>Order geotechnical (soils) report (only if applicable)</li> <li>Prepare zoning drawings (only if applicable)</li> <li>Prepare photo renderings (only if required)</li> <li>Prepare zoning packages</li> <li>Obtain construction drawings and specification for building permit and equipment/material procurement</li> <li>Prepare and submit build permit packages</li> <li>Obtain as-build/redline drawings for final site turn-over packages</li> </ul>				
<ul style="list-style-type: none"> <li>Manage A&amp;E firm</li> <li>Provide equipment, grounding, cable layouts, and HVAC loading for tenant improvement sites (if applicable)</li> <li>Verify site VDC (if applicable) and VAC power requirements</li> </ul>		C	R	C
<ul style="list-style-type: none"> <li>Coordinate and attend pre-application meeting with jurisdiction to verify code interpretation and application requirements</li> </ul>			R	
<ul style="list-style-type: none"> <li>Zoning application package completed &amp; submitted               <ul style="list-style-type: none"> <li>Obtain Landlord approval in advance</li> <li>Submit complete application as described in ordinance</li> </ul> </li> </ul>	060	I/C	R	
<ul style="list-style-type: none"> <li>Attend all public meetings and zoning hearings               <ul style="list-style-type: none"> <li>Coordinate with Clearwire for professional testimony</li> <li>Coordinate and attend community meetings to educate and diffuse issues before formal counsel meetings.</li> </ul> </li> </ul>		I/C	R	
<ul style="list-style-type: none"> <li>Obtain zoning approval               <ul style="list-style-type: none"> <li>Submit to Clearwire a copy of the complete amended application, staff recommendation, and approval notification</li> </ul> </li> </ul>	065	I	R	
<b>Site Acquisition – Building Permit</b>				
<ul style="list-style-type: none"> <li>Building permit package submitted</li> </ul>	070	I	R	
<ul style="list-style-type: none"> <li>Building Permit ready to be pulled               <ul style="list-style-type: none"> <li>Ensure permit does not expire for 6 months</li> </ul> </li> </ul>	075	I	R	
<ul style="list-style-type: none"> <li>Track Building Permit expiration date, notify Clearwire 30-days in advance of expiration.</li> </ul>		I	R	I
<ul style="list-style-type: none"> <li>Entitlement Complete</li> <li>The Contractors completes all work necessary to start construction which includes all necessary permits, filings, and legal documents to commence site construction activities</li> <li>All EH&amp;S documentation completed as Attachments to Agreement</li> <li>All pre-inspections have been completed or arranged</li> <li>Coordinate meeting with landlord to verify construction start and to validate construction windows.</li> <li>Verify any site access restrictions with landlord</li> </ul>		I	R	
<b>Construction Management</b>				
<ul style="list-style-type: none"> <li>Perform construction management activities necessary to complete site construction on schedule and per permitted construction drawings and Clearwire specifications and applicable laws.</li> </ul>		I	R	R
<ul style="list-style-type: none"> <li>Equipment procurement - Submit Base Station Specification (BSS) to Network Integration Center (NIC)</li> </ul>	080	I	R	I
<ul style="list-style-type: none"> <li>Receive and inventory equipment delivered from NIC               <ul style="list-style-type: none"> <li>Ensure all equipment received in good condition</li> <li>Store equipment in secured facility with 24 hour monitoring</li> <li>Create and maintain a property record for equipment stored and issued to the job site</li> </ul> </li> </ul>	085	I	I/C	R

Role Descriptions	MS	Clearwire	SA Vendor	Contract or
<ul style="list-style-type: none"> <li>Ensure completion of Civil Construction Acceptance Checklist and Punchlist               <ul style="list-style-type: none"> <li>Audit installation quality and ensure all punchlist items completed before final site acceptance</li> </ul> </li> </ul>		I	R	C
<ul style="list-style-type: none"> <li>Establish accounts with power/utility companies and ensure commercial AC service ordered and installed before market launch and scheduled on-air date</li> </ul>		I	R	I/C
<b>Pre-Construction</b>				
<ul style="list-style-type: none"> <li>Perform pre-construction activities necessary to complete site and ensure construction per permitted construction drawings and Clearwire specifications and applicable laws.</li> </ul>			R	I
<ul style="list-style-type: none"> <li>Provide cost to build estimate based on site type and conditions.</li> </ul>		I	I	R
<ul style="list-style-type: none"> <li>Coordinate construction walk-downs for each site               <ul style="list-style-type: none"> <li>Verify AC power availability</li> <li>Verify Telco MPOE</li> <li>Prepare and submit cost to build estimates</li> </ul> </li> </ul>		I	R/C	R
<ul style="list-style-type: none"> <li>Take care, custody and control of all equipment and material up until such time as the site is turned over to Clearwire through the acceptance process.</li> </ul>				R
<ul style="list-style-type: none"> <li>Procure materials necessary to construct each site per Clearwire guidelines</li> </ul>				R
<ul style="list-style-type: none"> <li>Establish project facilities and warehouse facilities               <ul style="list-style-type: none"> <li>Ensure all materials on-hand for construction</li> </ul> </li> </ul>		I	I	R
<ul style="list-style-type: none"> <li>Coordinate the delivery of commercial power service.</li> </ul>		I	R	I
<ul style="list-style-type: none"> <li>Confirm LOS for microwave path based on actual antenna mounting location and any changes to Network Design</li> </ul>		I	I	R
<ul style="list-style-type: none"> <li>Coordinate Telco (LEC) Field Visit (if required)</li> </ul>			R	I
<b>Construction</b>				
<ul style="list-style-type: none"> <li>Pull Building Permit</li> </ul>		I	I	R
<ul style="list-style-type: none"> <li>Start Construction</li> <li>Provide and maintain daily a detailed schedule of anticipated work progress showing major milestones, and all other items necessary to perform the construction per Clearwire specifications.</li> </ul>	100	I	I	R
<ul style="list-style-type: none"> <li>Install foundation, grounding, and equipment cabinet</li> </ul>				R
<ul style="list-style-type: none"> <li>Antenna, BTS, and cable installation</li> </ul>				R
<ul style="list-style-type: none"> <li>Site Interconnect – Leased T1</li> <li>Construction activities completed for LEC to deliver T1.</li> </ul>				R
<ul style="list-style-type: none"> <li>Site Interconnect – Leased T1: Install Backhaul/Transport.</li> <li>Contractor has coordinated the installation the LEC's Network Interface Unit (NIU).</li> <li>The LEC installs T1 generating card in NIU and sets DIP- switches for B8ZS/ESF.</li> <li>The LEC energizes the T1 stream</li> <li>The LEC completes testing of T1 from NIU to LEC hub and installs looping plug.</li> <li>Contractor installs the tie cable and terminates to the NIU.</li> </ul>		I		R
<ul style="list-style-type: none"> <li>Microwave installation and alignment</li> </ul>				R
<ul style="list-style-type: none"> <li>Site Construction and Ready for Commissioning; All necessary construction work is completed to allow for site commissioning</li> <li>Site is secure and accessible</li> <li>Equipment cabinet set</li> <li>Grounding installed &amp; tested per Clearwire specifications</li> </ul>		I	I	R

Role Descriptions	MS	Clearwire	SA Vendor	Contract or
<ul style="list-style-type: none"> <li>Commercial power has been delivered</li> <li>Microwave or T1 transport installed and tested</li> <li>All overhead tower, antenna, and line work completed</li> <li>Antenna system has been performance tested and as per Clearwire specifications.</li> </ul>				
<ul style="list-style-type: none"> <li>Complete civil construction acceptance checklist and punchlist</li> </ul>			I/C	R
<ul style="list-style-type: none"> <li>Construction Complete</li> <li>Complete all construction activities necessary to complete site construction per permitted construction drawings and Clearwire specifications.</li> <li>Obtain certificate of occupancy and other permits as required for construction of the Site.</li> <li>Submit a Preliminary Release of Liens to Clearwire from material suppliers and subcontractors</li> </ul>	130			R
<ul style="list-style-type: none"> <li>Pay-point # 1 to Contractor (70%)</li> <li>database data verification</li> <li>Reconcile milestone payment report</li> <li>Receive against OFS</li> <li>Contractor payment issued</li> </ul>		R/I	R/I	
<b>Commissioning</b>				
<ul style="list-style-type: none"> <li>Connect DC power plant, configure switch and perform system tests.</li> </ul>		R		
<ul style="list-style-type: none"> <li>Perform AC failover test</li> </ul>		R		
<ul style="list-style-type: none"> <li>Drive test RF performance</li> </ul>		R		
<ul style="list-style-type: none"> <li>Site On-Air announcement</li> </ul>	150	R	I	I
<b>Site Acceptance</b>				
<ul style="list-style-type: none"> <li>Turnover Package Complete</li> <li>All closeout documents required as per Clearwire's specifications.</li> </ul>		I	R	R
<ul style="list-style-type: none"> <li>Ensure all pre-site punchlist items have been cleared prior to Clearwire Final Acceptance.</li> </ul>		I/C	R	I/C
<ul style="list-style-type: none"> <li>Arrange a single final acceptance Site visit with the appropriate Clearwire personnel; provided that additional site visits may be required if there is noncompliance.</li> </ul>		I	R	I
<ul style="list-style-type: none"> <li>Final Acceptance</li> <li>Complete Final Site Acceptance as per Clearwire's specifications.</li> </ul>	160	R	C	C
<ul style="list-style-type: none"> <li>Pay-point # 2 to Contractor (Final 30%)</li> <li>Database data verification</li> <li>Reconcile milestone payment report</li> <li>Receive against OFS</li> <li>Contractor payment issued</li> <li>Close P/O</li> </ul>		R/I	R/I	I
<b>Quality and Safety</b>				
<ul style="list-style-type: none"> <li>Ensure all sub-contractors are working in a safe and orderly manner at all times and strict OSHA standards for safety are adhered to through the entire construction phase.</li> </ul>			R	R
<ul style="list-style-type: none"> <li>Ensure all sub-contractors conduct themselves in a polite and orderly manner at all times while working on the construction site.</li> </ul>			R	R

Role Descriptions	MS	Clearwire	SA Vendor	Contract or
<ul style="list-style-type: none"> <li>All sites are to be left clean and free of debris and garbage during the course of work and upon completion.</li> </ul>				R
<ul style="list-style-type: none"> <li>The Contractor must provide a Manager of Quality that is responsible for all quality control and assurance of installation of sites per the Specification and Drawings provided by Clearwire</li> </ul>		I	I	R
<b>Project Controls and Business Management</b>				
<ul style="list-style-type: none"> <li>Provide construction and project management of Contractor's Work.</li> </ul>		I	R	R
<ul style="list-style-type: none"> <li>Provide project management/coordination with other vendors as directed by Clearwire</li> </ul>		I	R	R
<ul style="list-style-type: none"> <li>Develop and maintain collaborative on-line milestone tracking schedule utilizing Clearwire tracking tools</li> </ul>		I	R	R
<ul style="list-style-type: none"> <li>Provide daily schedule updates, actual and forecast weekly on a site-by-site basis, for all milestone activities</li> </ul>		I	R	R
<ul style="list-style-type: none"> <li>Update the necessary Clearwire tools, as outlined in this SOW, for regular reporting cycles as mutually agreed upon between Clearwire and Contractor.</li> </ul>		I	R	R
<ul style="list-style-type: none"> <li>Issue all necessary Market level reports. Reporting cycle and report content to be mutually agreed upon between Clearwire and Contractor.</li> </ul>		I	R	R
<ul style="list-style-type: none"> <li>Following Clearwire established processes for data collection and status updating of all required business systems</li> </ul>		I/C	R	R

#### **2.5.4 Network Deployment Milestones**

Exhibit 1 Network Deployment Process Flow (Clearwire simplified Civil Construction SOW Process) provides a flow chart view of the overall process. The Network Deployment milestones associated with this SOW, are defined in Exhibit 2 Network Deployment Milestones.

#### **2.6 Security Requirements**

SA Vendor shall provide and coordinate all necessary access to Clearwire locations and systems to Contractor resources as required to perform Clearwire directed services.

#### **2.7 Safety and Health**

Contractor shall be solely responsible for conducting operations under this agreement to avoid risk of harm to the health and safety of persons and property and for inspecting and monitoring all its equipment, materials and work practices to ensure compliance with its obligations under this agreement.

Contractor's failure to correct any unsafe condition or unsafe act by its employees, suppliers or subcontractors of any tier may, at the sole discretion of Clearwire, be grounds for an order by Clearwire to stop the affected work or operations until the unsafe act or condition is corrected to Clearwire's satisfaction at Contractors' expense.

Contractor is required to have an established safety organization and defined safety program in place prior to performing any work. Contractor shall define safety roles and responsibilities which include training content and description, communications, inspection and audit, standards, and criteria, and frequency and timing of aforementioned aspects of the safety program. Contractor must develop description of the injury and accident investigation process and develop a description of the content and format of safety reports and if required make available for review by Clearwire.

#### **2.8 Cost Control**

Contractor shall utilize a cost tracking system to track all project costs against the original proposals. Project costs tracking may be tracked in a tool of the contractor's choosing but data will be made available to Clearwire in MS Excel Spreadsheet format upon request. All costs are to be separated between equipment costs and labor costs, and tracked / reported separately.

#### **2.9 Taxes**

Contractor will be responsible for calculating the breakdown of Tangible Personal Property (TPP) and Engineering / Installation Services for the purpose of tax liability calculations. Pricing is exclusive of any and all taxes, duties, social charges and levies.

#### **2.10 Procurement**

The procurement and management of the equipment and materials required for the project will be the responsibility of the contractor except where noted by Clearwire. Typically, the cabinet and supporting parts will be provided by Clearwire. Refer to the most current Installation Guide for the "**Typical Cabinet and Supporting Pallet Material List**." This list however is subject to change with changes to the product.

Contractor is required to establish market level warehousing, logistics and transport of material for a full and complete delivery to the job site. In the event Clearwire is not satisfied with the performance of said market level logistics, said activities shall be established solely at the Contractor's expense and made fully operational within 90 calendar days of written request by Clearwire.

The Contractor will supply the In-Scope materials as needed per site as outlined in the most current Installation guide for the "**Contractor Supplied Material List**." Normal assumptions have been made and Contractor's material costs for Contract Supplied Materials are included in the established fixed price for each Clearwire

Fixed Model. Contractor requested changes must be approved in advance per the Change Control process outlined in Section 2.13.

Contractor is encouraged to utilize existing and Clearwire identified material suppliers where noted to ensure material consistency and favorable pricing.

### **2.11 Documentation Control**

Contractor will act as the office-of-record for documentation/records. Contractor will be responsible for the maintenance, retention, and later turnover of documentation to Clearwire. The documentation of record includes all standard design documents: Project Procedures, Specifications, Standard Design Drawings, and general procurement documents such as Material Requisitions and Purchase Memorandums. If there is any discrepancy between the standard site drawings and the Installation Guide, the Installation Guide will govern and control.

All project document packages retained for record keeping and turnover are scanned to a pdf and uploaded to designated virtual storage. Contractor will establish process for information flow, revisions, and approvals of documentation.

### **2.12 Change Control**

A scope change control process will be implemented by Contractor in conjunction with Clearwire to manage all changes that may have a potential impact on Clearwire's over all cost. As changes are identified by each of the regional or market level teams, the cause of the variance shall also be identified and recommendations for disposition provided to Clearwire. The Change Control program is intended to minimize scope change impacts to the overall program through early identification and resolution of all issues before work proceeds. All additional work must be approved in writing by an authorized Clearwire representative prior to work proceeding.

Clearwire may, at any time, without notice to the sureties if any, by written Change Notice unilaterally direct additions, deletions, or changes in the design; drawings or specifications; method of performance; contractor provided equipment, material, services or sites, and milestones; and direct rescheduling, acceleration or deceleration to all or any part of the work and Contractor agrees to perform such work as changed. If at any time Contractor believes that acts or omissions of Clearwire constitutes a change to the work not covered by a Change Notice, Contractor must submit a written Change Notice Request within ten (10) calendar days of discovery explaining the basis for the request.

If there is any discrepancy between the standard site drawings and the Installation Guide, the Installation Guide will govern and control.

### **2.13 Site Conditions**

Contractor shall, at all times, keep its work areas in a neat, clean, free of debris and in safe condition during the course of work. Upon completion of work and prior to final payment, contractor shall remove its equipment, plant and surplus materials; dispose of all rubbish; and return all remaining Clearwire supplied equipment and materials to a Clearwire designated location.

Contractor shall be responsible for all risk of loss or damage to work in progress and all equipment and material in its possession. Contractor shall receive, unload, store, safeguard, and process such equipment. All costs for replacement, repair, or restoration required by reason of contractor failure to protect all equipment, facilities and materials described herein or for unauthorized obstruction, damage to or use of property shall be at Contractor's expense.

### **2.14 Quality**

Contractor shall establish quality requirements and processes and submit them for review and acceptance by Clearwire's project manager, operations manager, or a designated representative. Contractor shall design and implement a quality rating system with standards and criteria for inspections and audits. Document and report on quality score, inspection and audits. Contractor will institute continuous improvement processes for performance

and quality. The quality process will integrate with the warranty program in section 2.17 to remedy defects in a timely manner.

### **2.15 Fixed Asset Reporting**

If deemed necessary by Clearwire, Contractor shall provide Clearwire detailed fixed asset information in a format designated by Clearwire.

This asset information will include manufacturer, model number, description, part number, quantity, date installed or removed dollar value, site location, item master number, and other data fields that Clearwire may request.

### **2.16 Warranty**

Contractor warrants to Clearwire that any materials and equipment furnished to Clearwire under this agreement shall be new, of clear title and the most suitable grade of their respective kinds for the indented uses, unless otherwise specified. All workmanship shall be first class and performed in accordance with sound construction practices acceptable to Clearwire.

Contractor warrants all equipment and materials it furnishes and all work performed against defects in design, equipment, materials, or workmanship for a period from work commencement to a date two (2) years after acceptance of each job site.

If at any time during the warranty period, Contractor or Clearwire discovers any defect in design, equipment, materials or workmanship, immediate written notice shall be given to the other parties. Upon receipt of written notification, Contractor shall respond in writing within a reasonable time proposing corrective actions to cure such defects to meet the requirements of this agreement.

Contractor, at Contractor's expense, agrees to rework, repair, or remove and replace defective equipment and materials or re-perform defective workmanship to acceptable quality. All costs incidental to corrective actions including, but not limited to, demolition for access, removal, disassembly, transportation, reinstallation, reconstruction, retesting and re-inspection as may be necessary to correct the defect and to demonstrate that the previously defective work conforms to requirements of this agreement shall be borne by the Contractor.

Contractor further warrants any and all corrective actions it performs against defects in design, equipment, materials and workmanship for a period of twelve (12) months in addition to any existing warranty period, following acceptance by Clearwire of corrected work.

## **3.0 Risk Management**

### **3.1 Risk Identification**

Contractor will work with Clearwire to identify and plan for risks. These risks may be managed via a Risk Management Plan for the duration of the project. Identified risks may result in changes to strategy, project timeline, project cost, and the resource planning, based on their impact and priority. Changes in project timeline or cost shall be reflected in an equitable adjustment to the schedule and Contractor's cost. The Contractor will be responsible for identifying any new risks to Clearwire, regardless of impact or perceived "negativity".

### **3.2 Issues/Actions Log**

Contractor will maintain a daily Issues/Actions Log for each market and will regularly distribute the log to Clearwire. The log will be keyed to severity/priority. All program issues will be reviewed weekly with the Clearwire Project Manager or their designated representative to ensure priority and progress.



#### **4.0 Project Planning and Resources**

##### **4.1 Project Plan**

The Network Design will be provided by Clearwire and will consist of the RF design criteria for the specific market. Clearwire will provide the program level schedule which captures key milestones and run rates.

The intent of the program schedule is to ensure Clearwire's internal resources are aligned with the upfront activities and milestones and "need-by" dates require to support the market.

The program schedule will also provide a guideline for the Contractor to plan resources and to generate detailed market schedules. Upon review of the Network Design and Program Schedule, the Contractor has the opportunity to work with Clearwire to discuss and review any potential risks to ensure expectations are accurately communicated. The Program Plan is also an opportunity for the Contractor to ensure the implementation activities are evenly distributed over the duration of the project instead of "back-loading" schedule due to poor upfront planning.

##### **4.2 Reporting Requirements**

There will be various reporting requirements for Schedule, Cost, Safety and Quality. The reporting cycles and content of reports are subject to mutual approval between Clearwire and Contractor. Contractor will cooperate with all reasonable Clearwire requests for data. Contractor is expected to report project status in the areas of schedule, cost, and quality and report progress on a weekly basis (and daily if required and requested by Clearwire). Clearwire may request a specific designed report format at its discretion and will notify contractor in advance.

#### **5.0 Pricing**

##### **5.1 Pricing per Site**

For each site, the Contractor will be required to submit a separate bid form in substantially the same form attached and incorporated herein as Exhibit 3-Bid Form ("Bid Form"). The Bid Form for the first site shall be attached and identified as Exhibit 3 with each respective added site being identified sequentially as Exhibit 3-2, 3-3, 3-4 as needed for each site. Unless modified on the Bid Form for the applicable site or through changes pursuant to the Agreement, the Scope of Work for each site shall be as identified herein.

##### **5.2 Payment**

For purposes of payment for work under this Civil Construction SOW, Clearwire will issue two payments. The first payment will be at "Construction Substantially Complete". Contractor may submit invoice for this payment milestone when the following conditions have been met:

Equipment installed & configured. T1 accepted and/or path aligned and connected with POP. Site is ready for commissioning and everything is suitable for commercial On-Air. Drive testing completed and accepted by commissioning team.

The second payment milestone is "Final Acceptance" and is achieved when:

Clearwire accepts site. Turnover package submitted. Site defects identified on Punch list are complete and meet Clearwire expectations.

The percentages in Table 4 below refer to a percent of the Total Fixed Milestone Price per Site for all Services provided at a Site. The Payment Milestones have been identified for performance tracking and payment purposes.

**TABLE 4 Milestone Payment Summary**

<b>Payment</b>	<b>Description</b>	<b>Start Milestone</b>	<b>End Milestone (paypoint criteria)</b>	<b>% of Total Price Per Site</b>
1	Construction Substantially Complete	MS-005 Release of Initial EMSS -Upon receipt of NTP from Clearwire	Construction Substantially Complete. Equipment configured, installed and tested.	70%
2	Final Acceptance	MS-130 Construction Substantially Complete	MS-160 Site Acceptance	30%

### 5.3 Termination

#### 5.3.1 Termination for Convenience

1. In addition to any other termination right under the Agreement, Clearwire may terminate or suspend Work at a Site or in a market at any time, for any reason, within Clearwire's sole discretion ("Termination for Convenience"), by providing written notice (which may include email notice) to Contractor ("Termination/Suspension Notice"). Notwithstanding any provisions in the Agreement with respect to a right to terminate Work in a Market or at a Site, the provisions of this SOW shall supercede and replace any other provisions, including provisions relating to compensation or reimbursement for termination.

2. The Termination/Suspension Notice will specify the Site(s) or Market to be terminated or suspended. Within forty-eight (48) hours after receipt of the Termination/Suspension Notice if the number of Sites terminated is five (5) or less, and within thirty (30) calendar days after receipt of the Termination/Suspension Notice if the Sites terminated is more than 5 (provided that Contractor must diligently pursue completion), Contractor will provide Clearwire with a written summary ("Work Summary") of (a) the work needed to complete the next "End Milestone", (b) the appropriate steps to preserve and maintain the Work completed to date, (c) the status of any agreements affected by a Termination for Convenience, together with recommended steps to eliminate, reduce or minimize costs to Clearwire, (d) for each uncompleted Site, the costs incurred by Contractor to date that Contractor would seek reimbursement for if Clearwire determined not to have Contractor pursue completion to the next Payment Milestone, (e) for each uncompleted Site, the additional costs under the applicable Termination Payment Milestone for the type of Site necessary to complete each of the uncompleted Milestones for the Site, and (f) such other information that Clearwire may reasonably request to determine how to proceed in the most cost effective manner in the event of a termination. Promptly after receipt of the Work Summary, Clearwire will provide Contractor with written instructions on how to proceed with work at the terminated/suspended Sites and Contractor will proceed in accordance with such instruction. In the event of a suspension, Clearwire may provide an estimate of when the work may resume. However, Clearwire has no obligation to resume any suspended work. If Clearwire decides to resume work at a suspended Site, Clearwire will provide Contractor with at least thirty (30) calendar days written notice to Contractor when Clearwire will require Contractor to resume the Work. In no event will Contractor be paid more than one time for any milestone at a particular Site.

3. Notwithstanding any provision to the contrary, even though a Termination/Suspension Notice has been provided, if a Site is terminated, suspended or rejected for any of the following reasons, it will not be considered a Termination for Convenience: (a) if Contractor is in material default under the Agreement, (b) the Work is not in material compliance with the requirements of the SOW, including applicable guidelines, specifications and other Contract Documents, (c) Clearwire does not approve the proposed Extraordinary Expenses for a Site, or (d) environmental/Hazardous Material risks are identified at a Site. In the event that Clearwire requires the Contractor to cease work during Site Construction, the Contractor will be required to submit its justification for the portion of the Milestone Payments that it should receive. Such amount shall be based on the costs incurred by Contractor for work at the Site that represents that portion of the Milestone Payment that is commensurate with the progress achieved against that Milestone (inclusive of all taxes, fees and other charges); provided that in no event will such amount exceed the amount specified for the End Milestone payment.

**TABLE 5 Termination Payment**

<b>Payment</b>	<b>Description</b>	<b>Start Milestone</b>	<b>End Milestone (paypoint criteria)</b>	<b>Payment</b>	<b>Termination Payment</b>
1	Construction Substantially Complete	MS-005 Release of Initial EMSS -Upon receipt of NTP from Clearwire	Construction Substantially Complete. Equipment configured, installed and tested.	70%	50%
2	Final Acceptance	MS-130 Construction Substantially Complete	MS-160 Site Acceptance	30%	15%

**5.3.2 Miscellaneous Termination**

1. Contractor may not abandon or otherwise terminate work at a Site without the prior written approval of Clearwire. In addition, a Site will not be deemed to be abandoned unless Clearwire expressly notifies Contractor to abandon work at such Site.

2. In no event is Contractor entitled to reimbursement for materials under a termination for convenience by Clearwire, unless (a) the Services have been terminated after commencement of the Construction Services, (b) the materials were ordered in due course in accordance with normal scheduling processes for the affected Sites, and (c) Contractor has used best efforts to eliminate, reduce or minimize the amount of such costs, including reallocating such materials for Clearwire or other Contractor clients. It is understood and agreed, however, that requirements of subsections (a), (b) and (c) will not apply to unusual specialty materials that were necessarily ordered in a reasonable period in advance in order to meet construction schedules. In the event that Contractor submits a claim for reimbursement, Contractor will submit a summary documenting the circumstances that may require Clearwire to pay for such materials that were specific to a particular Site.

**5.4 General Construction Assumptions**

- Contractor shall furnish all necessary materials not provided or listed on the BOMs as well as tools and test equipment required for the performance of its work. All Contractor supplied materials, products or procedures incorporated into the work shall be new and of standard commercial quality and in accordance with the Clearwire guidelines.
- Contractor will equip their resources with the tools, temporary power, if required, and equipment necessary to perform the Work. Contractor shall furnish all necessary labor, equipment, and materials to install the power and Telco to sites required for the performance of its Work, if such commercial power and Telco are located within 200' of site.

**5.5 General Construction General Notes**

- Label markings shall be placed within 12" of the cabinet at both ends, at or near the tower MGB and either prior to the entry into the conduit or prior to entry into the cabinet. Label marking shall be at least 1" wide but not more than 2" wide. Multiple band markings, bands shall be separated by at least 1" but not more than 2".
- Cable runs shall be attached to the tower wave guide ladder using UV-Resistant black cables ties with 40lb minimum breaking strength.
- Portions of concrete materials shall be suitable for the installation method utilized and shall result in durable concrete for resistance to local anticipated aggressive actions. Concrete shall develop a minimum compressive strength of 3000 minimum psi at 28 days.
- Indoor conduit shall be EMT with compression type fittings or as specified by local code.

- Outdoor exposed conduit shall be GRC or schedule 80 PVC with UV protection.
- Power and Telco service right-of-way to point of demarcation and cabinet interface is limited to 300 linear feet of total combined trenching providing PVC conduit (excludes any required boring or road crossing)
- Provide and install up to 300 feet of cable from demarcation point to the Clearwire Cabinet.
- Provide and install up to 2 runs of the applicable cables from the antenna mounts to the Clearwire Cabinet. Installation also includes connectors, grounds, weatherproofing, and sweeps. Cables should be run in some kind of conduit for protection.
- Trenching and all site excavation work is soil dependent. All excavation done by standard means (back hoe or track hoe) is in scope; excavation requiring saw cutting, blasting, or hoe ram are out of scope.

**Note: The details in this SOW relate to Expedience markets. There will be minor differences with regards to cables, antennas and cabinet size in a WIMAX market.**

#### 6.0 Performance Incentives and Penalties

Clearwire expects the Contractor to deliver completed cell sites on schedule, meeting Clearwire quality standards and at the fixed price as each are set forth in this Agreement.

#### 7.0 Technical and Business Requirements

The Contractor shall comply with all Clearwire specifications applicable to site development, which may be revised by Clearwire from time to time. These Clearwire specifications include, but are not limited to:

  
Network Deployment Installation Guide  
Network Deployment Acceptance Checklist & Punchlist

#### 8.0 Signatures

**IN WITNESS WHEREOF**, the parties have caused this Statement of Work to be executed by their respective authorized representatives.

#### CLEARWIRE LEGACY LLC

By:  \_\_\_\_\_

Print Name: John A. Storch

Title: V.P. Network Deployment

Date: 3-9-09

#### EXCALIBUR COMMUNICATIONS, INC.

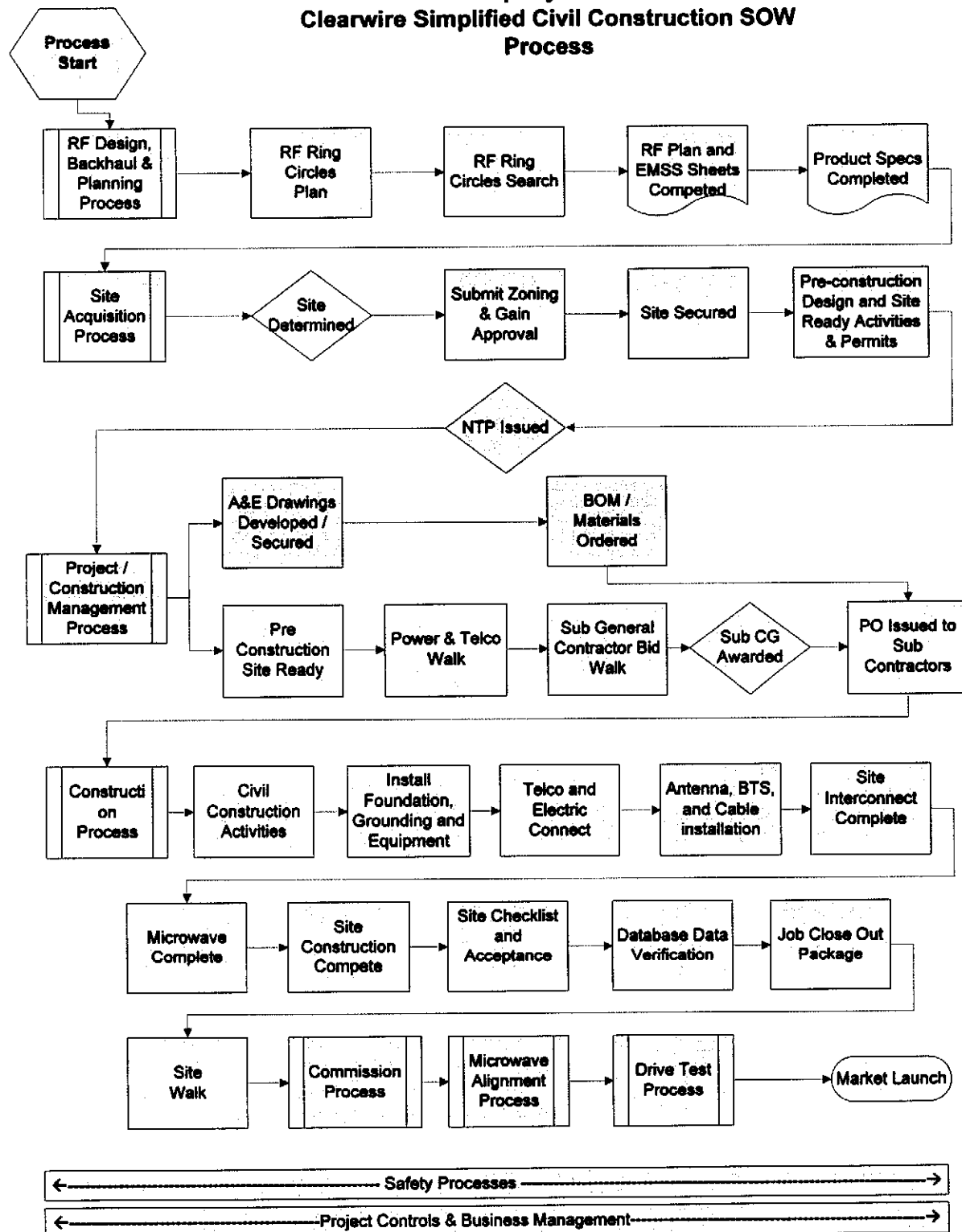
By:  \_\_\_\_\_

Print Name: Harry D. Smith, Jr.

Title: President

Date: 01/23/2009

# **EXHIBIT 1 Network Deployment Process Flow** **Clearwire Simplified Civil Construction SOW** **Process**



## EXHIBIT 2

### Network Deployment Milestones

Mile-stone	Milestone Name	Definition of Complete	Predecessor	Baseline Duration (5 day wks)	Baseline Duration (7 day wks)	Baseline Milestone Schedule
	<b>Initiation</b>	<b>Kickoff Notification</b>	<b>Enter project kickoff date here:</b>			<b>1/1/06</b>
MS-005	Release Initial Market Design	Initial release of Market Design from RF Engineering. NTP to SA to investigate primary candidates. Gate 2 completed	Initiation	30	42	02-12-06
MS-010	Primary Candidate Selection	Site Candidates Identified by SA and updates ClearVision with preliminary site information, released to develop doc package. Submit Forecast Timeline for each site, obtain approval from Clearwire PM Gate 3 complete.	MS-005	10	14	02-26-06
MS-020	Candidate Acceptance	Docs Package complete and accepted. Final Design is published by RF Engineering	MS-010	5	7	03-05-06
MS-030	Backhaul Lockdown	Includes Backhaul and POP design including Microwave & Leased Circuit Design. Network Solution complete. Gate 4 Complete. 60% Leasing Complete.	MS-020	20	28	4-2-06
MS-050	Lease Complete	Lease agreement executed by Clearwire and Landlord, recorded, and original filed in Kirkland and entered in . Permitting drawings complete. Gate 5 complete.	MS-101	40	56	4-23-06
MS-060	Zoning Filed	Zoning application complete and received by Clearwire. Jurisdiction acceptance, fees paid, and process clock started.	MS-050	5	7	4-3-06
MS-065	Zoning Approved	Zoning complete, hearing successful, conditions received, staff approval notice received, appeal period complete.	MS-060	20	28	5-28-06

<b>Mile-stone</b>	<b>Milestone Name</b>	<b>Definition of Complete</b>	<b>Predecessor</b>	<b>Baseline Duration (5 day wks)</b>	<b>Baseline Duration (7 day wks)</b>	<b>Baseline Milestone Schedule</b>
MS-070	Building Permit Filed	Drawings reviewed and approved, fees paid, jurisdiction accepted as complete and process clock started.	MS-065	0	0	5-28-06
MS-075	Pull Building Permit	Plan check complete. All ancillary departmental approval. Building permit pulled by contractor. Remaining fees paid.	MS-070	15	21	6-18-06
MS-080	Site BSS to NIC	Site configuration information (BSS) transmitted to NIC 30 days prior to construction start.	MS-100	-30	-42	5-7-06
MS-085	Site Equipment Rec'd	Includes BTS and Microwave backhaul equipment, and ancillary parts & pieces. 5 weeks before construction start.	MS-080	25	35	6-11-06
MS-100	Construction Start	Crews mobilized to the site and site construction in progress.	MS-075	0	0	6-18-06
MS-130	Construction Substantially Complete	Equipment installed & configured. T1 accepted and/or path aligned and connected with POP. Site ready for commissioning and everything suitable for commercial On-Air.	MS-100	20	28	7-16-06
MS-140	Commissioning	Drive testing complete and accepted by Commissioning team	MS-130	5	7	7-23-06
MS-150	ON- Air	Released into pre-qualification tool	MS-140	4	5	7-28-06
MS-160	Site Acceptance	Clearwire operations acceptance of site. Turnover package submitted. Site defects identified on Punch list complete and meets Clearwire expectations.	MS-150	10	14	8-11-06







4400 Carillon Point, Suite 400  
Kirkland, WA 98033

PHONE:  
425 216 7600

FAX:  
425 216 7900

ONLINE:  
[www.clearwire.com](http://www.clearwire.com)

## Exhibit 4

PURCHASE ORDER NO.

Change Order No.

Original Purchase Order Date:

Change Order No.

Issued:

### 1.0 PARTIES:

Buyer: Clearwire, LLC  
Site ID:  
4400 Carillion Point  
Kirkland, WA 98033  
PM

Seller:

Attn:  
Tel: Fax:  
E-mail:

Site No.

Purchase Order No.

Market:

This Change Order No. 1 is issued to Buyer to accomplish the following:

- 1.
- 2.
- 3.

As a result of the foregoing, the Purchase order amount is **(increased or decreased)** by All other terms and conditions remain unchanged.

Original Purchase Order Value	\$
Value Change Order No. 1(decrease)	\$
<b>Revised Purchase Order Value</b>	<b>\$</b>

All other terms and conditions of the original Purchase Order shall apply.

**A properly executed acceptance copy of this Change Order shall be returned to the National Energy Production Corporation within ten (10) days of receipt of this Change Order.**

Return to:

Clearwire, LLC.  
Address  
Attn: PM

**This Change Order expressly limits Contractor's acceptance to the terms and conditions of the original Purchase Order and any additional or different terms proposed in Contractor's acceptance are hereby rejected unless expressly agreed to in writing.**

Please acknowledge your acceptance of the Purchase Order Change by signing the Seller block below and returning a copy to Buyer.

**Buyer:**

1. By: \_\_\_\_\_

(Print Name)

2.

3. Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Seller:**

By: \_\_\_\_\_

(Print Name)

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTE: A REVISION "MUST BE MADE" TO THE  
PURCHASE ORDER FOR ALL CHANGE ORDERS BY  
THE CLEARWIRE PM.**



4400 Carillon Point, Suite 400  
Kirkland, WA 98033

PHONE: 425 216 7600  
FAX: 425 216 7900

ONLINE: www.clearwire.com

## Exhibit 5

### PARTIAL WAIVER AND RELEASE OF LIEN

WHEREAS, the undersigned ("Seller") is furnishing to Clearwire Legacy LLC. ("Buyer") (Work) in connection with the Project known as located in (Premises).

AND WHEREAS there are now no outstanding payments due, including municipal, state or federal charges, levies, or taxes unpaid or delinquent which constitute an encumbrance, claim or lien against the above Project or Premises as a result of or in any way arising out of the undersigned's performance under Purchase Order No. (Contract) with Buyer.

NOW, THEREFORE, upon receipt of the partial or progress payment in sum of \_\_\_\_, for Work performed under the Contract and as an inducement to Buyer to make same, the undersigned hereby affirms that through the date of signature of this document, as shown below, there are no outstanding claims against the Buyer or Owner by Seller, or any of Seller's suppliers, materialman, or labor.

THE UNDERSIGNED hereby specifically waives and releases any and all claims of any nature which it now has or may hereafter have against the Premises, Project or personal property of Buyer, or Owner for Work performed through the date indicated below except for (i) the monetary difference between the sum of all previous invoices plus the amount of the current invoice, and the sum of all previously paid invoices plus the dollar value of this payment, and (ii) claims which have been submitted to Buyer in accordance with the Contract for events which have occurred since the most recent prior payment. Upon payment of any portion of (i) above which was an amount withheld from prior payments for retention as permitted by the Contract the Seller specifically agrees herein to waive and release any and all claims to such amounts.

Given under my (our) hand(s) and seal(s) this \_\_\_\_ day of \_\_\_\_, 20\_\_.

Seller\_\_\_\_

By \_\_\_\_

Title \_\_\_\_

Subscribed and sworn to the undersigned this \_\_\_\_ day of \_\_\_\_, 20\_\_.

\_\_\_\_ Notary Public for the State

of \_\_\_\_ County

of \_\_\_\_

My commission expires \_\_\_\_



4400 Carillon Point, Suite 400  
Kirkland, WA 98033

PHONE:  
425 216 7600

FAX:  
425 216 7900

ONLINE:  
www.clearwire.com

## Exhibit 6

### FINAL WAIVER AND RELEASE OF LIEN

WHEREAS, the undersigned ("Seller") is furnishing to Clearwire Legacy LLC ("Buyer") Insert type of work (Work) in connection with the Site Construction for Site ID. Number located in (Premises).

AND WHEREAS there are now no outstanding payments due, including municipal, state or federal charges, levies, or taxes unpaid or delinquent which constitute an encumbrance, claim or lien against the above Project or Premises as a result of or in any way arising out of the undersigned's performance under Purchase Order No. (Contract) with Buyer.

NOW, THEREFORE, upon receipt of the final payment in the sum of \_\_, the undersigned will have received payment in full for the Contract, less any retainage as permitted by the Contract, and except for receipt of said payment and as an inducement to Contractor to make same, the undersigned hereby affirms that there are no outstanding claims against the Buyer or Owner by Seller or any of Seller's suppliers, materialman, or labor.

THE UNDERSIGNED hereby specifically waives and releases any and all claims of any nature which it now has or may hereafter have against the Premises, Project or personal property of Buyer or Owner for Work performed under the Contract except for retainage withheld as permitted by the Contract. Upon payment of aforesaid retainage or any portion thereof the Seller specifically agrees herein to waive and release any and all claims to such amounts.

Given under my (our) hand(s) and seal(s) this \_\_ day of \_\_, 20\_\_.

Seller: \_\_

By: \_\_

Title: \_\_

Subscribed and sworn to the undersigned this \_\_ day of \_\_, 20\_\_.

\_\_\_\_ Notary Public for the State

of \_\_ County

of \_\_

My commission expires \_\_